

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3658 of 2001
to
FIRST APPEAL No 3659 of 2001
with
CIVIL APPLICATION No 9164 & 9165 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GENERAL MANAGER

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR AJAY R MEHTA for Appellant
MR RC KODEKAR AGP for Respondent No. 1
MR AJ PATEL for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 06/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. On 1.10.2001, the Court issued notice for final hearing which was made returnable on 25th October, 2001. In response to the notice, learned advocate Mr. A.J. Patel appeared for the respondents - claimants and has placed on record relevant material.

#. Land bearing block no. 50 admeasuring 60 Are 40 sq. mts. and the land of block no. 51 admeasuring 61 Are 53 sq.mt. were the subject matter before the Special Land Acquisition Officer. Lands are situated at village Devrasan, Taluka and District Mehsana. The Special Land Acquisition Officer invoked provisions contained in Section 35 of the Land Acquisition Act, 1874 (hereinafter to be referred to as "the Act") for temporary acquisition for Oil & Natural Gas Corporation Limited. Notice was issued for temporary occupation of land for a period of three years only. After hearing the claimants, the Special Land Acquisition Officer, by his award dated 18.7.91 held that the claimants are entitled to 0.80 ps. per sq. mt. per year by way of rent. Over and above this, for standing crop, some amount was awarded which we will refer at the appropriate stage. The claimants being not agreeable with the rent fixed by the Special Land Acquisition Officer made applications under Section 35 (3) of the Act and that is how the References were required to be dealt with by the Reference Court for determining the amount of rent of the lands in question. The Reference Court, on appreciation of evidence placed before it and also relying on the decision produced on record at exh. 16 for acquisition of lands situated at village Sanganpur, fixed the market rent at Rs. 3.80 per sq. mt. per year. The Reference Court also held that the claimants are entitled to have 20% more compensation under the head of standing crops over and above the amount of compensation awarded by the Special Land Acquisition Officer. The Reference Court held that the claimants are entitled to get interest at the rate of 9% from the date on which it became due till its realisation. It is against this common award made in Land Acquisition Reference Nos. 1262/94 and 1263/94 by the Reference Court, the present appeals are preferred by the beneficiary and not the State Government or the Special Land Acquisition Officer.

#. Mr. Ajay Mehta, learned advocate appearing for the appellant contended that the Reference Court has committed grave error in appreciating the evidence and

determining the rent of the lands at Rs. 3.80 ps. per sq. mt. per year. He submitted that the Reference Court has committed error in relying on the award made with regard to the lands situated at village Sangapur. He further submitted that in most of the cases in Mehsana District, the Reference Court has fixed the yearly rent at Rs. 2.70 ps. per sq. mt. per year and therefore, in no case, the amount of rent fixed in the instant case can be said to be reasonable.

#. On the other hand, Mr. A.J. Patel, learned counsel, appearing for the respondents-claimants submitted that the Reference Court has determined the rent on the basis of the evidence which was placed on the record. He further submitted that the Reference Court has rightly considered the decision in the case where lands of village Sangapur were acquired. He submitted that even without relying on the award, there is sufficient evidence on the record of this case to determine the rent and the Reference Court has committed no error for determining the rent of the lands in question. Mr. Patel further submitted that the Reference Court was required to examine what is yearly income. The Reference Court was required to consider the evidence placed on the record and on the basis of the material placed on the record and after arriving at the conclusion as to what should be the yield per year, rent was required to be fixed. Mr. Patel further submitted that for the purpose of compensation in respect of the lands under acquisition, multiplier of 10 is given and the claimants would be entitled to have other statutory benefits also. He fairly stated that no doubt, the order is made under Section 35 of the Act and there being no permanent acquisition, the same principle may not squarely apply. But at the same time, he submitted that if it was for a period of three years, one can understand, but in the instant case, since 1991 i.e. after the date of acquisition even today the beneficiary is in possession of the lands. Cultivators are therefore denied the benefits of the yield.

#. To countenance the submission made by the learned counsel appearing for the beneficiary that O.N.G.C. is discharging its duties in the interest of nation, learned counsel for the claimants submitted that agriculturists are also serving the nation in better sense by providing agricultural products for food to the people and according to him, such argument should not have been advanced when the legislature has fastened duty on the authority acquiring the land either permanently or temporarily under the Act only on payment of adequate

compensation. According to Mr. Patel, provisions of the Act are required to be strictly followed not only for fixing the rent but for awarding statutory benefits i.e. interest at the escalated rate after one year, as well. Mr. Ajay Mehta, learned counsel for the beneficiary submitted that as no appeal is preferred for statutory benefits, the Court should not examine whether statutory benefits are required to be given or not. According to him, the Court is only concerned with the determination of rent. It is in the aforesaid background, these appeals are required to be disposed of.

#. It is required to be noted that the O.N.G.C. having large network in the State of Gujarat is acquiring lands at several places by invoking Section 35 of the Act. In Several cases, we have noticed that for more than 10 years, the lands are acquired and the O.N.G.C. is paying rent which is fixed by the Reference Court ultimately. Grievance is made on behalf of the claimants that the proceedings are taken very lightly by the officers while acquiring and determining the market rent. The claimants contended that initial proceedings before the Special Land Acquisition Officer, not only take time but illusory compensation is awarded. The claimants are compelled to approach under Section 35(3) of the Act for determination of true market rent. There also after waiting for a long time and spending sizeable amount towards fees for engaging a lawyer, wasting valuable time fruits are achieved. Again the claimants are dragged to the High Court. By this long drawn procedure, public time and public money are wasted. If considering the evidence, reasonable amount is awarded, according to claimant, the O.N.G.C. would serve the Society better.

#. As a matter of fact, after a period of three years, the beneficiary will have no right to retain possession of the land, but once possession is taken, the O.N.G.C. enters into an agreement. Mr. Patel submitted that the beneficiary being a statutory body and in dominating position, without following further procedure, it continues to be in possession and uneducated farmers being not aware, without realising the real loss, they enter into an agreement and ultimately they suffer. However, in the instant case, no agreements are placed on the record and therefore, we are not required to discuss that aspect. Suffice it to say that the lands were acquired in 1991 and thereafter after a period of three years, again rent of the land was required to be redetermined after following procedure laid down in the Act. It is known that the price of all the commodities are increasing every year. The price of land is also increasing every year. Even the Apex Court in several

cases has pointed that 10% increase should be given per year while determining the market price.

#. Mr. Patel drew our attention to the judgment of the Apex Court in the case of Central Inland Water Transport Corporation Limited and another v. Brojo Nath Ganguly and another [(1986) 3 Supreme Court Cases 156] and urged that whenever contracts which are unconscionable, unfair and unreasonable and opposed to public policy, they are void. He further submitted that the concept of unconscionableness, unfairness, unreasonableness and public policy must be taken into consideration. No doubt, that was a case pertaining to contractual terms of employment in stereotyped form on 'take it or leave it' basis, but was detrimental to the employees. Mr. Patel further submitted that if a contract is found to be unconscionable, unfair, unreasonable, against the public policy and public interest and against the principle of distributive justice and the contracts are inconsistent and violative of any of the provisions contained in Part III & IV of the Constitution of India, it must be held that there is breach of Articles 14 and 16 of the Constitution of India. He submitted that where party entering into a contract is a dominating one and the persons who are required to enter into agreements are poor agriculturists, atleast the Court should see that the documentary evidence which is required to be made available under the provisions contained in the Act must be made available. According to Mr. Patel, every three years rent is required to be redetermined. If the beneficiary - O.N.G.C. wants to remain in possession, it is the duty of the beneficiary to pay market rent.

#. So far as the present case is concerned, on record, we have evidence of claimant Khodabhai Pitambardas Patel vide exh. 9. He has pointed out in his evidence that 6040 sq. mts. of land of block no. 50 was acquired temporarily for the beneficiary. Along with his lands, lands of Keshavlal Haribhai were also acquired. He has pointed out that the lands are fertile and irrigated. The Special Land Acquisition Officer by an award dated 18.7.91, determined the rent per year at Rs. 80/= per Are and as he was not satisfied with the rent fixed by the Special Land Acquisition Officer and as the same was not fixed after taking into consideration various aspects, application was made claiming higher amount of rent. In his evidence, he has pointed out that the claimants used to take crops of cotton, wheat, castor seeds and a type of grass which makes buffaloes reach for providing milk. It is also stated that over and above this, Millet, Til, Juvar etc. were also cultivated.

This witness has also pointed out that the lands were irrigated lands. He has specifically stated that they used to take three crops a year and per Vigha which is equal to 2378 sq. mt., they used to earn in all, Rs. 30,000/- by three crops in a year. He has specifically stated that a sum of Rs. 10,000/- was required to be spent for agricultural expenses which includes seeds, manure, pesticides, fertilizers etc.

##. This witness has pointed out that the village is situated on Vijapur - Mehsana Highway and it has a population of about 7,000. He has stated that the lands which are acquired are also situated on the highway. He has stated that the village has got all facilities such as primary health centre, school, village Panchayat, telephone services, State Transport Bus service, Cooperative Societies etc. With regard to the distance, this witness has stated that the village is at a distance of 7 kms. from Mehsana (which is the District headquarter). With a view to substantiate his say about the crop, this witness has produced village forms 7 x 12 vide exhs. 10 and 11. He has also placed on record receipts for supply of water for irrigation vide exhs. 12 to 15.

##. This witness has further pointed out that the lands are situated near village Sangapur which is at a distance of 4 kms. About the nature and fertility of lands, he has stated that the lands of both the villages are equal. He has stated that the claimants' lands at village Sangapur were acquired temporarily for O.N.G.C. project and as adequate rent was not fixed by the Special Land Acquisition Officer, the Reference Court vide exh. 16 fixed the rent at Rs. 3.80 ps. per sq. mt. per year. This witness has admitted in the cross-examination that in the village, there is neither a factory nor any industry. It is also admitted that the village is not connected with railway station. He has fairly stated that they are not maintaining the books of accounts or bills for cultivation. He has denied the suggestion that he is giving false evidence to get higher amount of compensation by way of rent. It is required to be noted that on behalf of the appellant herein or the State, no suggestions have been put to this witness that they were not earning Rs. 20,000/- per year. Merely because small agriculturists are not maintaining books of accounts, their evidence cannot be doubted.

##. In the instant case, panchnamas were drawn at the time of taking possession. The panchnamas also reveal that there was standing crop. In the annexure to the

award made by the Special Land Acquisition Officer, he himself has pointed out that in the field of block 50, there was standing crop of castor seeds and the grass (specially cultivated for the use as fodder). He has also noted that there were 19 Nim trees, 10 Bordis (small fruit bearing tree) and 275 Lemon trees. Similarly, in another field of block 51, there were 11 Nim trees, 7 Bordis and 182 Lemon trees. On behalf of the claimants, Mr. A.J. Patel, learned counsel submitted that for the standing crop, an amount was determined and ultimately, the Reference Court has awarded 20% more. However, at the same time, the Reference Court has not taken into consideration the income that would be derived by the cultivators, particularly by growing Lemon and other fruit bearing trees. According to Mr. Patel, while determining the market price for considering the total yield, income that a person may derive from these fruit bearing trees was also required to be taken into consideration.

##. On record, there is an award made by the Special Land Acquisition Officer under Section 35 (2) of the Act. He has held that the amount of rent is to be fixed on the basis of yearly income. By examining the records, he has stated that it is not possible to state that three crops were taken in a year. However, he has stated that there are facilities of irrigation and according to him, two crops in a year were taken. From the award made by the Special Land Acquisition Officer, it appears that he has completed the job half heartedly. He has observed that it is not possible to note as to what is the yield per Vigha and that it is difficult as to what amount is required to be spent for cultivation per season. It is the duty of the Special Land Acquisition officer to assist the Court in determining the market rent or the market price by collecting material and placing it on the record. In the award, he has also observed that there is facility of taking Kharif and Rabi crops. He has referred that the crop of Bajri would be 25 Maunds per Vigha and that one would also be getting about 600 bunches of hay. There is also cultivation of Raido and castor seeds. The Special Land Acquisition Officer has arrived at a conclusion that in a year, only two crops are taken and considering that, the income would be Rs. 5005/= per year only. He has also observed that out of this amount, amount required to be spent for seeds, labour charges, irrigation facilities and other expenses are to be deducted and according to him, thereafter the cultivator would get Rs. 1900/= per year only. Ultimately, the Special Land Acquisition officer determined the rent at Rs. 80/= per Are.

##. The cultivator has produced evidence on record. When he has stated on oath about the varieties of crops, yearly income, amount expended, it is difficult to accept the contention that the same should not be accepted more particularly when there is no cross-examination on this aspect. The cultivator has entered the witness box and has deposed about the income and if he is not cross-examined, the cultivator is not to be blamed. It is not that the opportunity was not given. Therefore, one will have to take into consideration the yield for arriving at a conclusion as to what should be the rent per year. We have indicated what is stated in the award by the Special Land Acquisition Officer and there is much substance as to what the witness has deposed before the court about the yield. Therefore, the same is required to be accepted. There is documentary evidence with regard to income that one would derive from fruit bearing trees. A contention is raised by the learned counsel for the appellant that as the amount of compensation was paid for standing crop, in future even if there is loss of income, that is not required to be taken into consideration. In fact, for the yield basis, what one was earning out of agricultural income is required to be taken into consideration. Simply taking Rs. 25,000/= as deposed by the claimant as net income, he would be earning Rs. 8.41 per sq. mt. per year. In this view of the matter, we do not consider the income from Lemon or other fruit bearing trees.

##. When the lands of agriculturists are taken for exploration, of course, for natural minerals or for natural products, it does not mean that the agriculturists are to be exploited. They are required to be paid adequate compensation keeping in mind the principle laid down in the Act.

##. Mr. Mehta has submitted that because in the award, the Reference Court has arrived at a conclusion with regard to the lands of Sangapur and that award is challenged, the award cannot be taken into consideration. As we have stated earlier, the Court has to arrive at a conclusion as to what should be the market rent as there is sufficient evidence on the record.

##. In Mehsana district, wherever lands are acquired temporarily, the Reference Court has awarded Rs. 2.70 per sq. mt. per year and in some cases, the Reference Court has awarded Rs. 2.50 ps. per sq. mt. per year and therefore what Mr. Mehta has submitted in the instant case is that the Reference Court has committed

grave error while awarding Rs. 3.80 ps. per sq. mt. per year. His contention is that this Court has confirmed the finding and therefore, in no case, it should be more than Rs. 2.70 ps. per sq. mt. per year. It is required to be noted that at the stage of admission, matters were dismissed without hearing the other side and without there being cross appeal or cross objections. In the instant case, after hearing both the sides, we are deciding the matters. In the instant case, there is sufficient evidence as to what would be the yield and in other cases on the basis of the evidence, when the Reference Court determined the rent per sq. mt. per year, does not mean that the same is required to be taken in this case. However, considering that upto 1993, if Rs. 2.70 ps. per sq. mt. per year is paid by way of rent, even then in our opinion, as the prices are increasing every year including the price of the land, the amount of rent must increase. If after three years, fresh award is made, then considering the price as existing on that date, the Court will have to determine the market price or the rent. The Apex Court in several cases has pointed out that 10% rise should be taken as average per year and therefore, even if Rs. 2.70 ps. per sq. mt. per year is considered upto 1993 and 10% every year is given, the amount would be much more than what is awarded by the Reference Court. As per the calculation, for the year 1991, it would be at Rs. 2.70 ps. per sq. mt. per year, for the year 1992, it would be at Rs. 2.97 ps. per sq. mt. per year, for the year 1993, it would be at Rs. 3.26 ps. per sq. mt. per year, for the year 1994, it would be at Rs. 3.58 ps. per sq. mt. per year, for the year 1995, it would be at Rs. 3.93 ps. per sq. mt. per year, for the year 1996, it would be at Rs. 4.32 ps. per sq. mt. per year, for the year 1997, it would be at Rs. 4.75 ps. per sq. mt. per year and for the year 1998, it would be at Rs. 5.22 ps. per sq. mt. per year. But one must not go into all these details. The say of the beneficiary is that upto 1993, the claimant should get at the rate of Rs. 2.70 ps. per sq. mt. per year, for subsequent period as per above calculation, amount of rent would be appropriate. In the year 1991, according to Reference Court, the claimants were entitled to get at the rate of Rs. 3.80 ps. per sq. mt. per year. Considering the aforesaid figures the Court will have to consider the matter. Suffice it to say that in the instant case, we are of the view that the claimants are entitled to get Rs. 2.70 ps. per sq. mt. per year upto 1993 and thereafter in view of the aforesaid facts, they would be entitled to get Rs. 3.80 ps. per sq. mt. per year.

##. Mr. A.J. Patel, learned counsel for the claimants submitted that the statutory benefits which are required to be given under the Act must be given and for which cross appeals are not required to be filed. He submitted that considering the provisions contained in Order 41 Rule 33 of Code Civil Procedure, the Court must exercise powers and when statutory benefits are required to be granted for which no evidence is required to be read, the Court should pass appropriate order. Order 41 Rule 33 reads as under.

"Power of Court of Appeal.-- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:]

Provided that the Appellate Court shall not make any order under Section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."

##. Mr. Ajay Mehta, learned advocate for the appellant invited our attention to the judgment of the Apex Court in the case of *Nirmala Bala Ghosh v. Balachand Ghosh* [AIR 1965 SC 1874] where Court and pointed out as under.

"It is true that Order 41 Rule 33, is expressed in terms which are wide, but it has to be applied with discretion, and to cases where interference in favour of the appellant necessitates interference also with a decree which has by acceptance or acquiescence become final, so as to enable the Court to adjust the rights of the parties. If the appellate Court reaches a conclusion which is inconsistent with that of the court appealed from and in adjusting the right claimed by the appellant it is found necessary to grant relief to a person who has not appealed,

the power under O. 41 R. 33 may properly be invoked. No unrestricted right, however, is conferred by the Rule to re-open decrees which have become final merely because the appellate Court does not agree with the opinion of the Court appealed from."

In the case of Mahant Dhangir and another v. Madan Mohan and others [1987 (Supp) Supreme Court Cases 528], scope of Order 41 Rule 33 of Code of Civil Procedure has been pointed out. In para 15 of the said judgment, the Apex Court pointed out as under.

" But that does not mean, that the Math should be left without remedy against the judgment of learned single judge. If the cross-objection filed under R. 22 of O.41 CPC was not maintainable against the co-respondent, the Court could consider it under R. 33 of O.41 CPC. R. 22 and R. 33 are not mutually exclusive They are closely related with each other. If objection cannot be urged under R. 22 against corespondent, R. 33 could take over and come to the rescue of the objector. The appellate court could exercise the power under R. 33 even if the appeal is only against a part of the decree of the lower court. The appellate court could exercise that power in favour of all or any of the respondents although such respondent may not have filed any appeal or objection. The sweep of the power under R. 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The appellate court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate court could also pass such other decree or order as the case may require. The words "as the case may require" used in R. 33 of O. 41 have been put in wide terms to enable the appellate court to pass any order or decree to meet the ends of justice. What then should be the constraint? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraint that we could see, may be these: That the parties before the lower court should be there before the appellate court. The question raised must properly arise out of the judgment of the lower court. If these two requirements are there, the appellate Court could consider any

objection against any part of the judgment or decree of the lower court. It may be urged by any party to the appeal. It is true that the power of the appellate court under R. 33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The Court should not refuse to exercise that discretion on mere technicalities."

In the case of Kaksingh vs. Smt. Deokabai reported in AIR 1976 SC 634, the Apex Court held that under Order 41 Rule 33 of Code of Civil Procedure, the High Court is competent to pass a decree for the enforcement of a charge in favour of the respondent notwithstanding the fact that the respondent did not file any appeal from the decree. The Apex Court in paras 6 and 7 of the judgment pointed out what Apex Court held earlier. Paras 6 and 7 read as under.

"6. In Giani Ram & others v. Ramji Lal and others(2) the Court said that in O.41, r. 33, the expression "which ought to have been passed" means "what ought in law to have been passed" and if an appellate court is of the view that any decree which ought in law to have been passed was in fact not passed by the court below, it may pass or make such further or other decree or order as the justice of the case may require.

7. Therefore, we hold that even if the respondent did not file any appeal from the decree of the trial court, that was no bar to the High Court passing a decree in favour of the respondent for the enforcement of the charge."

The parties before the Reference Court are before us and therefore, to do the justice to the parties, more particularly the agriculturists, who are deprived of their lands, may be temporarily, by invoking these provisions orders should be passed. The Court is not passing an order for which additional evidence is required, but the Court is required to pass the order which the Reference Court was required to pass namely to grant statutory benefits. In the instant case, what Mr. Patel submitted is that the Reference Court while passing the award held that the claimants are entitled to get 9% interest per annum. Sections 28 and 34 of the Land Acquisition Act, 1894 read as under.

"28. Collector may be directed to pay interest

on excess compensation.

If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry."

"34. Payment of interest. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited :

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

Section 35 will have to be reproduced with a view to point out what the law provides.

"Sec. 35 Temporary occupation of waste or arable land, procedure when difference as to compensation exists. ____ Subject to the provisions of Part VII of this Act, whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or

for a Company, the appropriate Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

- (2) The Collector shall thereupon give notice in writing to the person interested in such land of the purpose for which the same is needed, and shall for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.
- (3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court."

The legislature has given a mandate that if within a period of one year, amount of compensation is not paid, it will be the duty of the Court to award 9% interest per annum and for remainder period, at the escalated rate of 15% per annum i.e. one would be entitled to get at the rate of 15% per annum after one year. In the instant case, the Reference Court awarded 9% interest. However, Mr. Mehta submitted that on reading Section 28 of the Act, it is clear that it is not a mandatory provision but it is a directory provision. Proviso to Section 28, according to Mr. Mehta casts duty on the Court to exercise discretion and if the discretion is not exercised, then it is for the Court not to award 15% interest but to award only 9% interest and therefore, in the absence of appeal or cross objections, the Court should not pass order in favour of the land losers, may be temporarily. On combined reading of Sections 28, 34 and 35, it appears to us that the amount of compensation has been withheld by the State Government or the acquiring body or the beneficiary. The person in whose favour award is made is deprived of the compensation in time.

##. In the case of *Sunder v. Union of India* [2001 SOL Case No. 551], after considering the provisions with regard to compensation and interest, the Apex Court has

held that the person is entitled to the compensation awarded and to get interest on the aggregate amount including solatium. Considering the aforesaid decision and the language of Sections 28, 34 and 35, we are of the view that the interest as contemplated must be paid by the State Government or the acquiring body or the beneficiary as the case may be. Therefore, the appeals filed by the appellant are partly allowed. The order of the Reference Court is modified to the extent that upto end of 1993 the claimants will be paid rent at the rate of Rs. 2.70 per sq. mt. per year and thereafter at the rate of Rs. 3.80 per sq. mt. per year as fixed by the Reference Court. The claimants are held entitled to claim interest for the first year @ 9% per annum and thereafter till realisation @ 15% per annum. The judgment and order made by the Reference Court stands modified accordingly. The appellant to pay the cost of this proceedings which is quantified at Rs. 5,000/-. The award passed by the Reference court is modified. The claimants are held entitled to get statutory benefits. Consequently, Civil Applications for stay stand rejected.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]

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